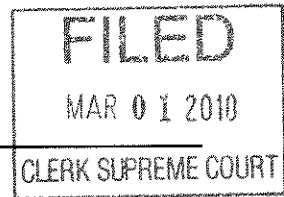


IN THE SUPREME COURT OF IOWA



IN THE MATTER OF THE  
CLIENT SECURITY COMMISSION

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2008-2009 REPORT

TO THE CHIEF JUSTICE AND JUSTICES OF THE IOWA SUPREME COURT:

This report of the Client Security Commission is submitted as required by Iowa Court Rule 39.4 for the reporting period January 1, 2008 through December 31, 2009. The financial reports of the Commission as prepared by Brooks Lodden, P.C., covering the fiscal years ending June 30, 2008, and June 30, 2009, have been forwarded to the Court previously. Each of the financial reports includes a section entitled *Management Discussion & Analysis*, which was prepared by Commission staff. Examination of the *Management Discussion & Analysis* statements is recommended in lieu of any separate analysis the Commission might provide regarding financial operations of the Commission.

INTRODUCTION

The Client Security Trust Fund of the Bar of Iowa and the Client Security Commission were activated on January 1, 1974, with \$20,000.00 in funds received as a grant from the Iowa State Bar Foundation. That grant since has been repaid. On December 1, 2008, and again on December 1, 2009, the Commission filed certificates with the Court, stating that the unrestricted fund

balance, after discounting all pending claims, totaled more than \$600,000.00. Under the provisions of Iowa Court Rule 39.6(4), no additional assessment was payable during 2009, or will be payable during 2010, by lawyers who previously have paid assessments totaling \$200.00 or more into the fund. As of December 1, 2009, the actual cash balance of the Client Security Trust Fund totaled \$888,504.51, and the unrestricted balance totaled \$645,056.28.

### THE COMMISSION

#### Members

Chapter 39 of the Iowa Court Rules provides for the Client Security Commission and the Client Security Trust Fund. Iowa Court Rule 39.1 provides for the appointment of seven members to the Commission, two of whom are not to be lawyers. During the period covered by this report the non-lawyer members of the Commission were Jamie Ward of West Des Moines and Sondra Holmstrom of Fort Dodge. The lawyer members of the Commission during the period covered by this report were the Honorable Martha L. Mertz-LaFollette of Knoxville, Craig R. Foss of Fairfield, Timothy C. Lynch of Decorah, Mary A. Weideman of Iowa City, and Lance D. Ehmcke of Sioux City. The final allowable term of Craig R. Foss concluded on December 31, 2009. Mr. Foss had served as a member of the Commission since his original appointment in 2000. Judge David Christensen was appointed to the position formerly occupied by Mr. Foss.

At the fall 2008 meeting, Craig R. Foss was elected Chairperson, Timothy Lynch was elected Vice Chairperson, and Jamie Ward was elected Treasurer. At

the fall 2009 meeting, Timothy Lynch was elected Chairperson, Judge Martha Mertz-Lafollette was elected Vice Chairperson, and Jamie Ward was reelected Treasurer.

### CLAIMS EXPERIENCE

#### Claims Considered

During 2008, the Commission authorized and made payment on four requests for reimbursement, totaling \$35,878.42. The claims approved and paid during 2008 are summarized as follows:

The Commission authorized payment on one claim in the total amount of \$6,891.25 arising from the actions of lawyer Jeffrey Garreans. Mr. Garreans is deceased.

The Commission authorized payment on one claim in the amount of \$2,000.00 because of the actions of lawyer Brian Earley. The Iowa law license of Mr. Earley has been revoked.

The Commission authorized payment on one claim in the amount of \$3,159.27 because of the actions of lawyer Brandon Adams. The Iowa law license of Mr. Adams has been suspended.

The Commission authorized payment on one claim in the amount of \$23,827.90 because of the actions of lawyer Kyle Williamson. The Iowa law license of Mr. Williamson has been revoked.

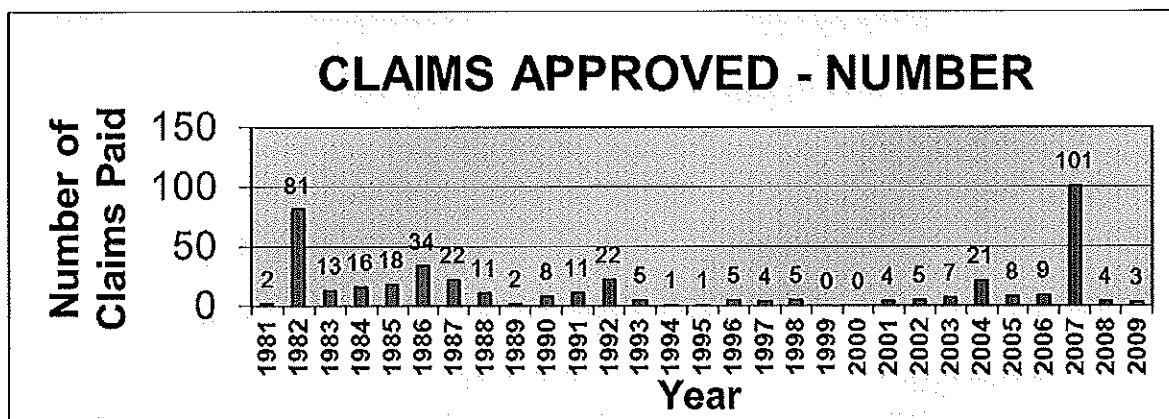
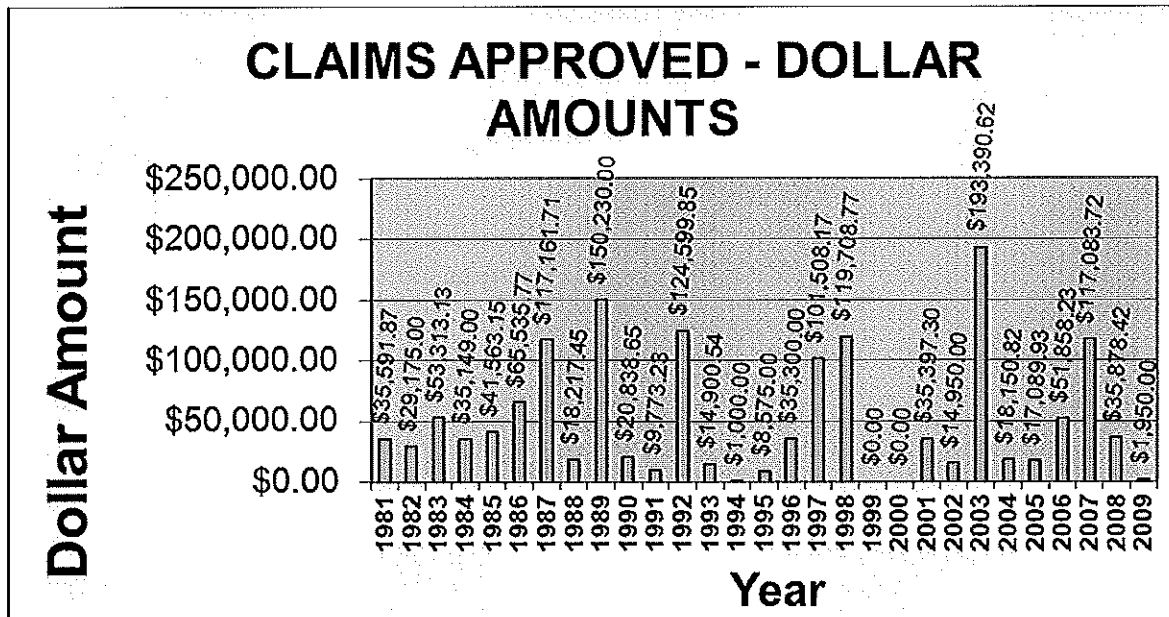
During 2009 the Commission authorized and made payment on three requests for reimbursement, totaling \$1,950.00. The claims approved and paid during 2009 are summarized as follows:

The Commission authorized payment on one claim in the total amount of \$700.00 arising from the actions of lawyer John Meyer. Mr. Meyer is deceased.

The Commission authorized payment on one claim in the total amount of \$750.00 arising from the actions of lawyer Anthony R. Johnson. Mr. Johnson's law license has been suspended.

The Commission authorized payment on one claim in the total amount of \$500.00 arising from the actions of lawyer Christopher W. Hansen. Mr. Hansen's law license has been suspended.

As shown in the following charts, the total amount of money paid on claims and the number of claims approved by the Commission during 2008 and 2009 was typical of the claims experience in most prior years.



Eleven requests for reimbursement were pending before the Commission on January 1, 2008. During calendar year 2008, twenty additional requests for reimbursement were filed. The disposition of these thirty-one pending and new matters by the Commission in 2008 was as follows:

<u>Disposition</u>	<u>Number</u>
Payment authorized and made	4
Reimbursement denied	14
Pending on December 31, 2008	13

Thirteen requests for reimbursement were pending before the Commission on January 1, 2009. During calendar year 2009, twenty-two additional requests for reimbursement were filed. The disposition of these thirty-five pending and new matters by the Commission in 2009 was as follows:

<u>Disposition</u>	<u>Number</u>
Payment authorized and made	3
Reimbursement denied	15
Pending on December 31, 2008	17

The total sum requested for the claims pending on December 31, 2009, as limited by per claim and per lawyer caps, was \$324,598.52.

Substantially all of the claims denied in recent years failed to qualify for reimbursement because they did not arise from the dishonest conduct of a member of the Bar of the State of Iowa while acting either as an attorney or fiduciary. The Commission is not authorized to approve requests for payment arising out of voluntary joint ventures with lawyers or the personal lending of money to lawyers. Additionally, the Client Security Fund is not intended and is

not authorized to provide protection against malpractice or to resolve disputes about the amount of a lawyer's charges.

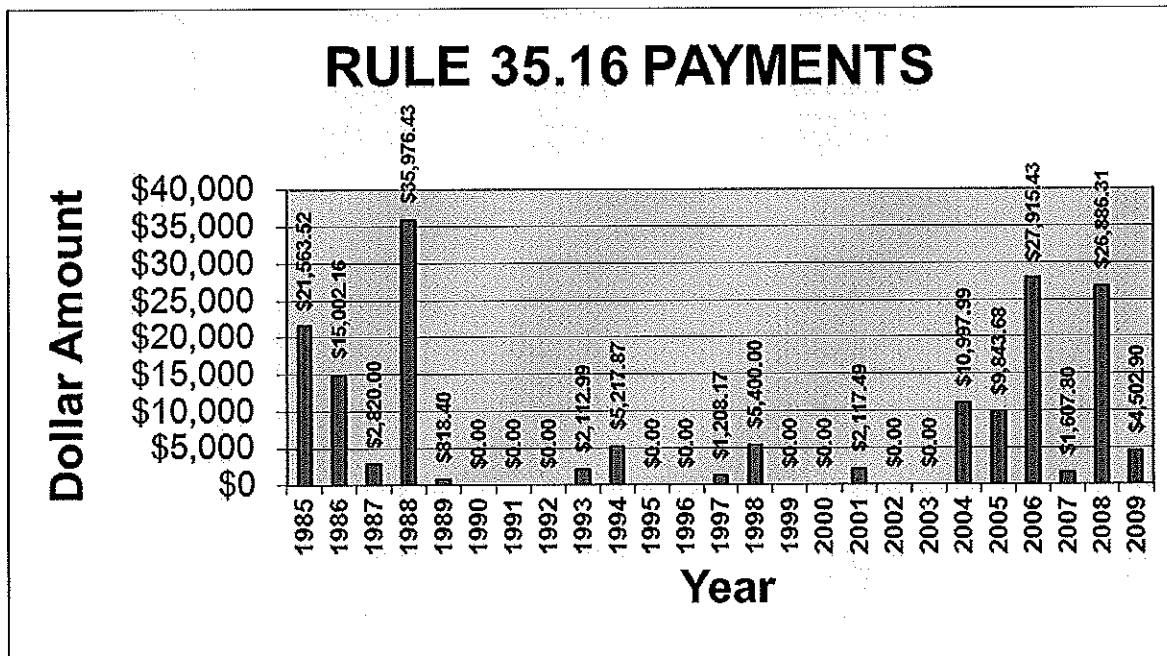
Commission rules, as amended in 1984, provide \$50,000.00 as the maximum reimbursement one claimant may receive from the fund, and \$150,000.00 as the maximum aggregate amount payable from the fund because of the dishonest conduct of any one attorney. The Commission continues to observe the policy, in accordance with the unanimous opinion of its members, that if lawyers embezzle they should be prosecuted to the full extent of the law in the same manner as any other person would be. The responsibility for prosecution in such cases generally remains with authorities in the county of the lawyer's residence, occasionally assisted by the Area Prosecutions office of the Attorney General of Iowa. In accordance with governing regulations, when information is received by the Commission indicating an apparent violation of the criminal laws by a lawyer, such information is reported to the Court for such action as the Court deems appropriate.

#### Trustee Appointments

Iowa Court Rule 35.16 provides for a disability suspension pursuant to a sworn application on behalf of a county bar association or the Attorney Disciplinary Board, and allows the Chief Judge of the judicial district in which the attorney has been practicing to appoint a lawyer or lawyers to serve as trustee in connection with matters in progress in the office of the lawyer suspended under the rule. Appointment of a trustee to inventory files, sequester client funds and take other appropriate action to protect the interests of the

clients and other affected persons, also operates to identify and assist in the management of claims for reimbursement filed with the Client Security Commission.

Iowa Court Rule 35.16 further provides a trustee may seek reasonable fees and reimbursement of costs in connection with these matters from the suspended attorney. If unsuccessful, the trustee may submit a fee claim to the Client Security Commission. The Commission, in the exercise of its sole discretion, determines the merit of the claim and the amount of any payment from the fund. Four trustee claims in the total amount of \$26,886.31 were authorized and paid from the Client Security Trust Fund during 2008, and one trustee claim in the amount of \$4,502.90 was approved and paid during 2009, under Iowa Court Rule 35.16. During prior years, payments have been authorized under Iowa Court Rule 35.16 as shown in the following table.



### COMPLIANCE

As of February 2, 2010, 14,219 lawyers were licensed to practice law in the State of Iowa. Of that number, 5,475 had received certificates of exemption based on the fact that they have now retired, are practicing law in a state other than Iowa, or are not engaged in the practice of law.

A total of 264 lawyers were exempt from payment of assessments into the fund by reason of having been admitted to the Iowa Bar within the past two years or as a result of their active duty military service status. The 8,744 lawyers who were not exempt from payment of the assessment to the fund included 1,207 government employees; 865 full-time corporate employees; and 267 justices and judges. Each of the lawyers included in the foregoing groups pays assessments of \$25.00 annually into the fund until they have paid assessments totaling \$200.00. The majority of these lawyers previously have paid the full \$200.00 in assessments. A total of 1,209 practitioners qualify to pay \$25.00 as an assessment as a result of their classification as part-time practitioners. The 4,801 lawyers classified as full-time practitioners also are required to pay annually into the fund until they have paid assessments totaling \$200.00. The majority of full-time practitioners have paid assessments of \$200.00 or more into the Client Security Trust Fund.

During the reporting year 2008, the licenses of eight attorneys were suspended by the Court for failure to comply with the reporting and fee payment provisions of chapter 39 of the Iowa Court Rules. During the reporting year 2009, the license of one attorney was suspended for the same reason.



The failure to file the required annual questionnaire and statement with the Commission by March 1<sup>st</sup> of the year resulted in payment of a \$25.00 late filing penalty under the Commission's rules by each of 786 lawyers during 2008. During 2009, failure to file the required annual questionnaire and statement with the Commission by March 1<sup>st</sup> of the year resulted in payment of late filing penalties by 617 lawyers, ranging from \$100 to \$200 each under the Commission's rules.

#### ANNUAL FEE TO FINANCE DISCIPLINARY SYSTEM

Chapter 39 of the Iowa Court Rules was amended by order dated December 15, 1994 and effective January 3, 1995. The amendment provided that in addition to providing indemnification for losses caused to the public by the dishonest conduct of members of the bar of this state, the fund also would support administration of the lawyer disciplinary system and other programs that impact the disciplinary system, including but not limited to the Iowa Lawyers Assistance Program.

Effective in 1995, as a condition to continuing membership in the bar, every bar member, unless exempt, is required to pay to the Commission an annual fee as determined by the Court to finance the disciplinary system. The annual fee during 2008 and 2009 was \$175.00. Annual fees received to finance the disciplinary system totaled \$1,482,085 during 2008, and \$1,448,420 during 2009. The fees received to finance the disciplinary system were expended to pay operating expenses of the Iowa Supreme Court Attorney Disciplinary Board, the

Grievance Commission of the Supreme Court of Iowa, the Iowa Supreme Court Commission on the Unauthorized Practice of Law, and a portion of the operating expenses of the Iowa Lawyers Assistance Program.

The annual fee to be paid by each attorney to support the attorney disciplinary system for calendar year 2010 is set at \$175.00. The annual fee collected again will be used to pay annual operating expenditures for the Attorney Disciplinary Board, Iowa Lawyers Assistance Program, Grievance Commission, and the Commission on the Unauthorized Practice of Law.

The Commission has established separate bookkeeping records and accounts for funds received to finance the disciplinary system. A Disciplinary Fund checking account has been established for disciplinary operations. The required annual fees received from attorneys to finance the disciplinary system are deposited in the Investment Account of the Client Security Commission, where they earn interest pending transfer to the Disciplinary Fund checking account. Funds deposited to the Disciplinary Fund checking account are diverted to interest bearing certificates of deposit to the extent not necessary to support current operations of the entities supported by the disciplinary fee.

#### AUDIT

Brooks Lodden, P.C., Certified Public Accountants, audited the Client Security Fund. The report of the accounts for the accounting periods ending November 30, 2007, June 30, 2008, and June 30, 2009, previously have been submitted to the Court. During these reporting periods, the Commission

transitioned from a fiscal year ending November 30th for accounting and budget purposes to a fiscal year ending June 30th. In reviewing the recap of revenues, it is noted that reimbursements were recovered on prior claims paid by the fund in the amount of \$175.00 during calendar year 2008, and \$5,053.00 during calendar year 2009. The Commission intends to continue its policy of seeking reimbursement of paid claims when circumstances warrant. The Commission continues to adhere to its longstanding investment philosophy of safety. The Commission's policy is to invest only in United States government or United States government-related securities or fully FDIC-insured brokered certificates of deposit. Investments purchased are held until maturity.

#### OPERATIONS

Commission funds are deposited in accounts at Wells Fargo Bank, Des Moines, Iowa. All checks drawn upon the investment checking account require the signature of two authorized signatories. The operating funds are deposited in a separate checking account with a maximum of one-half of the monthly operating budget being transferred into the account at any one time. The Director of the Office of Professional Regulation is authorized to sign checks from that account up to a maximum of \$2,000.00, with checks over \$2,000.00 requiring the signature of a second authorized signatory. A \$200,000.00 dishonesty insurance policy covers the Director, all employees of the Commission, and all Commissioner members.

For the fiscal year beginning July 1, 2009, the Commission submitted and

the Court approved the following operating budget:

CLIENT SECURITY COMMISSION FISCAL YEAR 2009-2010 BUDGET

Salary and Salary Expenses

Director	\$24,531.28
Assistant Director	\$25,110.91
Auditors	\$79,200.00
Clerical – Bookkeeping	\$30,974.54
Part-Time Data / Call Center Support	\$1,800.00
Employee Insurance	\$19,793.45
Deferred Compensation	\$1,188.00
FICA	\$12,363.68
IPERS	\$10,747.51
Travel Expenses - Director, Commission	\$3,000.00
Travel Expenses – Auditor	\$20,000.00
Rent	\$8,805.00
Auditing	\$5,750.00
Telephone	\$1,200.00
Office Supplies	\$1,000.00
Printing	\$2,000.00
Postage	\$4,000.00
Copier Lease	\$1,300.00
Repairs & Maintenance	\$200.00
Employer Insurance	\$1,100.00
Unemployment Insurance	\$200.00
Miscellaneous, Including Moving	\$5,000.00
Automation Support	\$2,040.00
Internet App. Maint. & Development	\$5,000.00
Internet Payment Charges	\$4,000.00
Payroll Processing	\$316.00
TOTAL OPERATING EXPENSES	\$270,620.37
CAPITAL EXPENDITURES	\$1,500.00
TOTAL PROJECTED EXPENDITURES	\$272,120.37

### COMPLIANCE REVIEWS

During 2008 and 2009, auditors employed by the Client Security Commission conducted trust account compliance examinations as shown in the following table. Also during 2008 and 2009, the auditors reviewed accounts in which lawyers were serving as fiduciaries as shown in the table.

	Year <u>2008</u>	Year <u>2009</u>
Trust Account Compliance Examinations	479	515
Number of Lawyers Subject to Compliance Examinations	749	1190
Fiduciary Account Examinations	328	193

This level of audit activity continues the trend in increased trust account audits that began during fiscal year 2004. The examinations are designed to make certain that trust accounts and fiduciary accounts of lawyers are properly maintained and used in accordance with the requirements of chapter 45 of the Iowa Court Rules.

By order dated January 15, 1980, the Court authorized verification of the attorney's answers on the annual questionnaire during the trust account compliance examination. Additionally, the Court authorized inquiry regarding the status of any probate matters delinquent for more than sixty days after notice. The auditors do check the status of delinquent probate matters and request the cooperation of the lawyer involved in clearing up any delinquencies. Generally, lawyers are cooperative in curing any delinquency.

The Commission's audit staff has visited the offices of almost all lawyers in

active practice in the State of Iowa and examined their trust accounts. The Commission's goal is to examine each trust account every three to four years. The fact that an examination is made does not indicate any violations are suspected on the part of the lawyer or lawyers involved. Cooperation by members of the Iowa Bar continues to be excellent. The Commission's staff has published an outline on trust account procedures and made it available to all Iowa lawyers on the Commission web page. In addition, the Director of the Office of Professional Regulation and the Assistant Director for Boards & Commissions periodically appear at continuing legal education events to discuss proper trust accounting procedures.

The majority of Iowa lawyers properly use their trust accounts. Commission auditors and staff often receive questions on trust accounting, and auditors and staff are happy to share their knowledge and experience to assist any lawyers who have such questions. Iowa was the first state to make periodic examinations of lawyers' trust accounts and continues to be the leader in that field. It is the Commission's belief that routine examinations of lawyers' trust accounts help deter that small number of lawyers who might otherwise make use of the funds of others. The Commission also believes that periodic audits help reduce the losses resulting from attorney diversion of client monies, through early detection. Commission members and staff also believe that the record revealed by this report continues to prove the wisdom of establishing the Client Security Trust Fund and the benefits of its continued operation.

Dated: March 1, 2010.

Respectfully submitted,

CLIENT SECURITY COMMISSION OF  
THE SUPREME COURT OF IOWA

Timothy Lynch, Chairperson

Craig R. Foss (2000-2009; Chairperson 2006-  
2009)

The Honorable Martha L. Mertz-LaFollette

The Honorable David Christensen

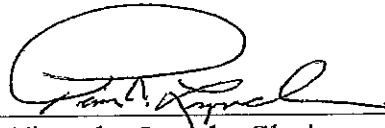
Sondra Holmstrom

Jamie Ward

Mary A. Weideman

Lance D. Ehmcke

By

A handwritten signature in black ink, appearing to read "Timothy Lynch", written over a horizontal line.

Timothy Lynch, Chairperson